

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

NEW ENGLAND CENTRAL
RAILROAD, INC.,

Plaintiff,

-v.-

Civil Action No. 04-30235-MAP

SPRINGFIELD TERMINAL
RAILWAY COMPANY, et al.,

Defendants.

**MOTION FOR LEAVE TO FILE
REPLY MEMORANDUM OF REASONS
IN RESPECT OF MOTION TO DISMISS**

Pursuant to Rule 7.1(c) of the Rules of this Court, the defendants hereby move for leave to file the annexed Reply Memorandum of Reasons in Respect of Motion to Dismiss. Counsel for the plaintiff has not responded to an e-mail, sent on the morning of February 22, requesting their consent to the motion.

Respectfully submitted,



Robert B. Culliford
BBO #638468
Iron Horse Park
North Billerica MA 01862
978-663-1029

Eric L. Hirschhorn
Winston & Strawn LLP
1400 L Street, NW
Washington DC 20005
202-371-5706

February 23, 2005.

DC:402620.1

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

NEW ENGLAND CENTRAL
RAILROAD, INC.,

Plaintiff,

-v.-

Civil Action No. 04-30235-MAP

SPRINGFIELD TERMINAL
RAILWAY COMPANY, et al.,

Defendants.

**REPLY MEMORANDUM OF REASONS
IN RESPECT OF DEFENDANTS'
MOTION TO DISMISS**

Pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, and Rule 7.1 of the Rules of this Court, the defendants have moved to dismiss this action because this Court lacks jurisdiction over the subject matter and because the complaint fails to state a claim on which relief can be granted [Docket No. 6]. The plaintiff now has filed its opposition to the motion to dismiss [Docket No. 10], but also has filed an amended complaint [Docket No. 11] that is substantially different from their original complaint [Docket No. 1].¹ The amended complaint supersedes the original, 3 Moore's Federal Practice § 15.17[3] (2005), effectively moots the defendants' motion to dismiss, and starts the running of the period under Rule 15(a) for the defendants to answer or move with respect to the amended complaint.

¹ The amended complaint was filed with a motion for leave to amend. Because the plaintiff has not previously amended its complaint and no answer has been filed, however, plaintiff has the right to amend without leave of the Court or the consent of the defendants. Fed. R. Civ. P. 15(a); 3 Moore's Federal Practice §§ 15.10, 15.11 (2005).

Accordingly, the defendants' original motion to dismiss should be denied as moot, but without prejudice to the defendants' right to answer or move in respect of the amended complaint.

Respectfully submitted,



Robert B. Culliford
BBO #638468
Iron Horse Park
North Billerica MA 01862
978-663-1029

Eric L. Hirschhorn
Winston & Strawn LLP
1400 L Street, NW
Washington DC 20005
202-371-5706

*Attorneys for Defendants Springfield
Terminal Railway Company and Boston
and Maine Corporation*

February 23, 2005.

The defendants accordingly are treating the amended complaint as one that requires no further action by the Court in order to allow its filing.